

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1439**

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**Introduced by Assembly Member Levine**

February 23, 2007

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An act to add Sections 17053.15 and 23631 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1439, as amended, Levine. Personal income tax and corporation tax laws: credits: employee fitness.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, ~~2008~~ 2009, in an amount equal to 10% of the amount paid or incurred by a qualified taxpayer, as defined, during the taxable year for qualified fitness expenditures, as defined, for the taxpayer's employees performing services in this state.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17053.15 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.15. (a) For each taxable year beginning on or after
- 4 January 1, ~~2008~~ 2009, there shall be allowed as a credit against
- 5 the "net tax," as defined in Section 17039, an amount equal to 10

1 percent of the amount paid or incurred by a qualified taxpayer  
2 during the taxable year for qualified fitness expenditures.

3 (b) For purposes of this section, both of the following definitions  
4 apply:

5 (1) (A) “Qualified fitness expenditures” means amounts paid  
6 on or incurred by a qualified taxpayer for any of the following:

7 (i) The costs of equipping, operating, and maintaining a facility  
8 owned by the taxpayer, located on the taxpayer’s premises in this  
9 state, and used exclusively for the purpose of promoting the  
10 physical fitness of the taxpayer’s employees in this state, including,  
11 but not limited to, a gymnasium, weight training room, aerobics  
12 workout space, swimming pool, running track, or any indoor or  
13 outdoor court, field, or other site used for competitive sports events  
14 or games.

15 (ii) The cost of equipping of, or providing any financial support  
16 to, an amateur athletic team that ~~engages in vigorous athletic~~  
17 ~~activity and~~ is under the sponsorship of the taxpayer, either alone  
18 or jointly with one or more other employers, if the membership of  
19 the team consists entirely of the employees of the taxpayer in this  
20 state, or the taxpayer and another employer or employers with  
21 whom the taxpayer has joined to provide employee fitness  
22 equipment and financial support.

23 (iii) The cost of subsidizing an employee’s membership with a  
24 health studio or a health club that is located in this state.

25 (iv) Fifty percent of the cost of employing a qualified person  
26 or an organization to provide, on the taxpayer’s business premises  
27 in this state, either of the following services:

28 (I) Information and guidance on subjects relating to personal  
29 and family health, including, but not limited to, nutrition, hygiene,  
30 and methods of preventing, recognizing, and combating substance  
31 abuse.

32 (II) Instruction in, and opportunity for, fitness enhancements  
33 activity, including, but not limited to, dance or other aerobic  
34 exercise, yoga, muscle stretching, and martial arts routines.

35 (v) Costs incurred in connection with hiring an organization to  
36 operate an employee fitness facility, provide employee fitness  
37 equipment and financial support, or provide employee fitness  
38 instruction, on the taxpayer’s premises in this state.

39 (B) For purposes of this paragraph, the following definitions  
40 apply:

1 (i) "Amateur athletic team" means a team of persons who engage  
2 in competitive athletic events for which no monetary remuneration  
3 is provided, all of whom are employed by the taxpayer or an  
4 employer with whom the taxpayer has joined to provide the  
5 employee fitness equipment and financial support.

6 (ii) "Qualified person" means a person certified by a recognized  
7 national organization to provide the instruction and information,  
8 as described in clause (iv) of subparagraph (A).

9 ~~(iii) "Vigorous athletic activity" means exertion that makes a~~  
10 ~~person sweat and breathe hard, such as basketball, soccer, running,~~  
11 ~~swimming laps, fast bicycling, fast dancing, and similar aerobic~~  
12 ~~activities.~~

13 (2) "Qualified taxpayer" means any employer that has employees  
14 in this state.

15 (c) The credit allowed by this section shall be in lieu of any  
16 deduction to which the taxpayer otherwise may be entitled for  
17 expenses on which a credit under this section is claimed.

18 (d) The credit allowed by this section to a qualified taxpayer  
19 may not exceed ~~either of the following: an amount that is equal~~  
20 ~~to fifty dollars (\$50) multiplied by the average number of qualified~~  
21 ~~taxpayer's full-time employees in this state during the taxable year~~  
22 ~~measured on the last day of each three-month period of that year.~~

23 ~~(1) Fifty percent of the qualified taxpayer's "net tax" for that~~  
24 ~~taxable year.~~

25 ~~(2) An amount that is equal to fifty dollars (\$50) multiplied by~~  
26 ~~the average number of taxpayer's full-time employees in this state~~  
27 ~~as of the last day of the third, sixth, ninth, and twelfth months in~~  
28 ~~that taxable year.~~

29 (e) When two or more qualified taxpayers jointly establish and  
30 operate an employee fitness facility, provide employee fitness  
31 equipment and financial support, or provide employee fitness  
32 instruction in accordance with this section, the participating  
33 taxpayers may apportion the total amount of the tax credit allowed  
34 by this section in any manner they consider appropriate, subject  
35 to any applicable regulations promulgated by the Franchise Tax  
36 Board, not to exceed the limitations imposed by subdivision (d).

37 (f) (1) In the case where the credit allowed by this section  
38 exceeds the "net tax," the excess may be carried over to reduce  
39 the "net tax" in the following year, and in the six succeeding years  
40 if necessary, until the credit is exhausted.

(2) A qualified taxpayer that files an amended return may not receive any amount of credit, or credit carryover, pursuant to this section in excess of the amount claimed by the taxpayer on its *timely filed*, original return for the taxable year. This paragraph does not apply to increases in the amount of credit claimed under this section on an amended return due to the use of any credit amount previously carried forward for the taxable year on the original return or any eligible prior taxable year.

(g) Verification of payments to not-for-profit or for-profit corporation, or to a person who provides health or fitness instruction to a taxpayer's employees, must be in writing and must be retained by the taxpayer in support of the credit claimed on the tax return.

~~(h) Application for credit for payments made to construct or rehabilitate a facility used for the purpose of promoting the physical fitness of the taxpayer's employees in this state must be submitted to the Franchise Tax Board within six months after the local building inspector deems that the construction or rehabilitation of the facility is substantially completed. Application for credit for qualified fitness expenditures must be submitted to the Franchise Tax Board with the tax return on which the credit is claimed.~~

~~(i)~~

(h) The Franchise Tax Board shall prescribe rules and regulations necessary to administer this section, including the provisions of subdivision (e).

SEC. 2. Section 23631 is added to the Revenue and Taxation Code, to read:

23631. (a) For each taxable year beginning on or after January 1, 2008 2009, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount equal to 10 percent of the amount paid or incurred by a qualified taxpayer during the taxable year for qualified fitness expenditures.

(b) For purposes of this section, both of the following definitions apply:

(1) (A) "Qualified fitness expenditures" means amounts paid on or incurred by a qualified taxpayer for any of the following:

(i) The costs of equipping, operating, and maintaining a facility owned by the taxpayer, located on the taxpayer's premises in this state, and used exclusively for the purpose of promoting the physical fitness of the taxpayer's employees in this state, including,

1 but not limited to, a gymnasium, weight training room, aerobics  
2 workout space, swimming pool, running track, or any indoor or  
3 outdoor court, field, or other site used for competitive sports events  
4 or games.

5 (ii) The cost of equipping of, or providing any financial support  
6 to, an amateur athletic team that ~~engages in vigorous athletic~~  
7 ~~activity~~ and is under the sponsorship of the taxpayer, either alone  
8 or jointly with one or more other employers, if the membership of  
9 the team consists entirely of the employees of the taxpayer in this  
10 state or the taxpayer and another employer or employers with  
11 whom the taxpayer has joined to provide employee fitness  
12 equipment and financial support.

13 (iii) The cost of subsidizing an employee's membership with a  
14 health studio or a health club that is located in this state.

15 (iv) Fifty percent of the cost of employing a qualified person  
16 or an organization to provide, on the taxpayer's business premises  
17 in this state, either of the following services:

18 (I) Information and guidance on subjects relating to personal  
19 and family health, including, but not limited to, nutrition, hygiene,  
20 and methods of preventing, recognizing, and combating substance  
21 abuse.

22 (II) Instruction in, and opportunity for, fitness enhancements  
23 activity, including, but not limited to, dance or other aerobic  
24 exercise, yoga, muscle stretching, and martial arts routines.

25 (v) Costs incurred in connection with hiring an organization to  
26 operate an employee fitness facility, provide employee fitness  
27 equipment and financial support, or provide employee fitness  
28 instruction, on the taxpayer's premises in this state.

29 (B) For purposes of this paragraph, the following definitions  
30 apply:

31 (i) "Amateur athletic team" means a team of persons who engage  
32 in competitive athletic events for which no monetary remuneration  
33 is provided, all of whom are employed by the taxpayer or an  
34 employer with whom the taxpayer has joined to provide the  
35 employee fitness equipment and financial support.

36 (ii) "Qualified person" means a person certified by a recognized  
37 national organization to provide the instruction and information,  
38 as described in clause (iv) of subparagraph (A).

39 (iii) ~~"Vigorous athletic activity" means exertion that makes a~~  
40 ~~person sweat and breathe hard, such as basketball, soccer, running,~~

1 ~~swimming laps, fast bicycling, fast dancing, and similar aerobic~~  
2 ~~activities.~~

3 (2) “Qualified taxpayer” means any employer that has employees  
4 in this state.

5 (c) The credit allowed by this section shall be in lieu of any  
6 deduction to which the taxpayer otherwise may be entitled for  
7 expenses on which a credit under this section is claimed.

8 (d) The credit allowed by this section to a qualified taxpayer  
9 may not exceed ~~either of the following~~ *an amount that is equal to*  
10 *fifty dollars (\$50) multiplied by the average number of qualified*  
11 *taxpayer’s full-time employees in this state during the taxable year*  
12 *measured on the last day of each three-month period of that year.:*

13 ~~(1) Fifty percent of the qualified taxpayer’s “tax” for that taxable~~  
14 ~~year.~~

15 ~~(2) An amount that is equal to fifty dollars (\$50) multiplied by~~  
16 ~~the average number of taxpayer’s full-time employees in this state~~  
17 ~~as of the last day of the third, sixth, ninth, and twelfth months in~~  
18 ~~that taxable year.~~

19 (e) When two or more qualified taxpayers jointly establish and  
20 operate an employee fitness facility, provide employee fitness  
21 equipment and financial support, or provide employee fitness  
22 instruction in accordance with this section, the participating  
23 taxpayers may apportion the total amount of the tax credit allowed  
24 by this section in any manner they consider appropriate, subject  
25 to any applicable regulations promulgated by the Franchise Tax  
26 Board, not to exceed the limitations imposed by subdivision (d).

27 (f) (1) In the case where the credit allowed by this section  
28 exceeds the “tax,” the excess may be carried over to reduce the  
29 “tax” in the following year, and in the six succeeding years if  
30 necessary, until the credit is exhausted.

31 (2) A qualified taxpayer that files an amended return may not  
32 receive any amount of credit or credit carryover pursuant to this  
33 section in excess of the amount claimed by the taxpayer on its  
34 *timely filed*, original return for the taxable year. This paragraph  
35 does not apply to increases in the amount of credit claimed under  
36 this section on an amended return due to the use of any credit  
37 amount previously carried forward for the taxable year on the  
38 original return or any eligible prior taxable year.

39 (g) Verification of payments to not-for-profit or for-profit  
40 corporation, or to a person who provides health or fitness

1 instruction to a taxpayer's employees, must be in writing and must  
2 be retained by the taxpayer in support of the credit claimed on the  
3 tax return.

4 ~~(h) Application for credit for payments made to construct or~~  
5 ~~rehabilitate a facility used for the purpose of promoting the physical~~  
6 ~~fitness of the taxpayer's employees in this state must be submitted~~  
7 ~~to the Franchise Tax Board within six months after the local~~  
8 ~~building inspector deems that the construction or rehabilitation of~~  
9 ~~the facility is substantially completed. Application for credit for~~  
10 ~~qualified fitness expenditures must be submitted to the Franchise~~  
11 ~~Tax Board with the tax return on which the credit is claimed.~~

12 ~~(i)~~

13 (h) The Franchise Tax Board shall prescribe rules and  
14 regulations necessary to administer this section, including the  
15 provisions of subdivision (e).

16 SEC. 3. This act provides for a tax levy within the meaning of  
17 Article IV of the Constitution and shall go into immediate effect.